

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Estate of Robert Pardy,
through its administrators
Kyley Gobin and Sara Pardy; and
Estate of Cody Pardy, through
its administrator Dorothy Ferland,
Plaintiffs

v.

Civil No. 09-cv-192-SM
Opinion No. 2010 DNH 086

Alabama Farmers Cooperative, Inc.
d/b/a Bonnie Plant Farm; and
Highlands Fuel Delivery, LLC; and
Johnson & Dix Fuel Corporation,
Defendants

O R D E R

Defendant Alabama Farmers Cooperative ("AFC") moves to dismiss two of the three cross-claims brought against it by defendant Highlands Fuel Delivery: intentional spoliation of evidence (count one) and negligent spoliation of evidence (count two). That motion is granted.

Highland's spoliation cross-claims fail for at least two reasons. First, the New Hampshire Supreme Court has yet to recognize a common law tort claim for spoliation of evidence. See Rodriguez v. Webb, 141 N.H. 177, 179 (1996). See also Cavadi v. Bank of America, N.A., No. 07-cv-224-PB, 2008 DNH 066 at *3 (D.N.H. April 1, 2008).

Second, even if New Hampshire did recognize such a cause of action, Highlands alleges that AFC allowed the loss, theft, or destruction of irrelevant evidence (i.e., the furnace's burner unit). Plaintiffs claim that their decedents died as a result of carbon monoxide poisoning, caused by "an extremely rusted and corroded exhaust pipe from the furnace [to the chimney, which] had collapsed and fallen" to the floor. Amended complaint (document no. 15) at para. 27. There is no suggestion that the now-missing burner played any role in the decedents' deaths (other than by performing its intended function of igniting fuel and, as a byproduct, producing carbon monoxide). And, Highland has failed to articulate how the loss of that burner (and Highland's inability to subject it to inspection and/or testing) in any way hinders its ability to defend this litigation.

Alabama Farmer's Cooperative's motion to dismiss counts one and two of Highlands' cross-claims (document no. 47) is granted.

SO ORDERED.


Steven J. McAuliffe
Chief Judge

May 24, 2010

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